IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. [redacted] 102

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC and MILAN STOJIC, and also BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, *Petitioners*

v.

STATE OF OREGON, acting by and through the State Land Board, *Respondent*

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC, MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and RAJKA ZEKIC, and BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, *Petitioners*

v.

STATE OF OREGON, acting by and through the State Land Board, *Respondent*

PETITIONERS' REPLY BRIEF

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I

The respondent assumes, as did the Court below, that construing a treaty is a sort of mechanical process in which the meaning of phrases can be determined without regard to their context, and wholly without reference to the treaty's purpose. This is, however, a mis-

taken assumption, for "all parts of a treaty are to receive a reasonable construction with a view to giving a fair operation to the whole", *Sullivan* v. *Kidd*, 254 U.S. 433, 439 (1921), since "[i]t is a canon of interpretation to so construe a * * * treaty as to give effect to the object designed, and for that purpose all of its provisions must be examined * * *". *In re Ross*, 140 U.S. 453, 475 (1891). In applying this principle, this Court has, for example, construed "Americans" as including foreign seamen shipping on American vessels, *In re Ross*, *supra*; "States of the Union" as including the District of Columbia and the several territories, *DeGeofroy* v. *Riggs*, 133 U.S. 258 (1890); "trade" as encompassing the operation of a pawn-shop, *Asakura* v. *Seattle*, 265 U.S. 332 (1924); "vessel" as including its cargo and all persons aboard, *Ford* v. *United States*, 273 U.S. 593 (1927); and "goods and effects" as including real estate. *Todok* v. *Union State Bank*, 281 U.S. 449 (1930).

Since treaties "must receive a fair interpretation * * * so as to carry out their manifest purpose", *Wright* v. *Henkel*, 190 U.S. 40, 57 (1903), it follows that "[i]n order to determine whether * * * a construction is admissible, regard should be had to the purpose of the treaty". *Santovincenzo* v. *Egan*, 284 U.S. 30, 37 (1931). Accordingly, this Court will reject a construction that is "inconsistent with the general purpose and object" of the treaty, *Sullivan* v. *Kidd*, 254 U.S. 433, 440 (1921), or that would render it "null and inefficient". *DeGeofroy* v. *Riggs*, 133 U.S. 258, 270 (1890). The Petition (pp. 16-22) makes it abundantly clear, and the respondent makes no effort to refute that the construction adopted by the Court below is "inconsistent with the general purpose and object" of

the Convention and would render it substantially "null and inefficient".

II

There is, of course, no question but that it is for the Courts to determine the construction to be given a treaty, and the petitioners do not contend otherwise. But in its day-to-day conduct of foreign affairs and protection of American rights abroad, the Executive must necessarily, and does construe international agreements to which the United States is a party.[1] While, concededly, such constructions are not *binding* on the Courts, they are not to be disregarded, as the respondent seems to contend. On the contrary, they are always to be accorded "much weight". *Charlton* v. *Kelly*, 229 U.S. 447, 468 (1913); *Sullivan* v. *Kidd*, 254 U.S. 433, 442 (1921). Moreover, in the circumstances of this case (pet. pp. 18-21) the Executive construction here would appear to be entitled to even greater weight.

[1] The truncated 1910 statement of Secretary Knox quoted by the respondent (pp. 15-16) does not represent the policy of the State Department as it was then or at any other time. The Department of State has, indeed, on innumerable occasions undertaken to construe treaties, in exchanges of notes and otherwise. See, e.g., *United States* v. *Pink*, 315 U.S. 203, 224 n. 7 (1942); *Factor* v. *Laubenheimer*, 290 U.S. 276, 295 (1933); *Sullivan* v. *Kidd*, 254 U.S. 433, 438 (1921); *Charlton* v. *Kelly*, 229 U.S. 447, 466-472, 475 (1912); *Castro* v. *DeUriarte*, 16 Fed. 93, 98 (S.D.N.Y. 1883). The part of Secretary Knox' statement which the respondent fails to quote shows that his reason for not concurring in Mexico's construction of the treaty there concerned was that "it is not entirely clear to the department that the contention which you make regarding the meaning of Article VIII * * * is the only one which may properly be placed upon it * * *." V Hackworth, *Dig. Int. L.* (1943) 399. Secretary Knox did not hesitate to construe a treaty when he was confident of its meaning. See, *Charlton* v. *Kelly*, *loc. cit. supra*.

Thus, in *United States* v. *Reid*, 73 F. 2d 153, 156 (C.A. 9th, 1934), cert. denied 299 U.S. 544, the Court said:

> This historical attitude of the state department should be of great, if not controlling, weight in construing our treaty * * *.
>
> * * *
>
> This rule would apply with even more cogency where the state department * * * negotiating with the other treaty-making power concerning the meaning and effect of a treaty, * * * insists upon a not unreasonable construction of its terms which is acquiesced in by the other power.

Somewhat similarly, the applicable principle is stated as follows in the American Law Institute's *Restatement of the Foreign Relations Law of the United States* (Tentative Draft No. 3, 1959), § 136:

> In exercising the authority * * * to interpret international agreements for purposes of determining their effects as internal law, courts in the United States give great weight to the interpretations of the President. In applying this rule the courts take into account:
>
> (a) The fact that a judicial interpretation contrary to an executive interpretation previously communicated to another party to the international agreement may result in difficulties for the United States in the conduct of its foreign relations and possibly subject the United States to liability under international law for breach of the international agreement; * * *

Nor, indeed, will the Court reject out of hand a Congressional construction of a treaty inhering to the enactment of legislation. *Pigeon River Improvement, Slide & Boom Co.* v. *Charles W. Cox, Ltd.*, 291 U.S. 138 (1934).

III

The "similarity" which the respondent and the Court below purport to see between the treaty provision here involved, and that with which *Clark* v. *Allen*, 331 U.S. 503, 514-516 (1947) was concerned, is wholly illusory. The latter empowered nationals of one country "to dispose of their personal property of every kind within the territories of the other" and provided that their donees, *inter vivos* or *causa mortis*, would succeed thereto, regardless of the donee's residence or nationality. Obviously, "within the territories of the other" describes "their personal property of every kind" and not the donors, as the respondent and the Court below would suggest by the use of italics and asterisks. See Resp. Br., pp. 4, 5, 12; Pet., pp. 12-14, 18a, 19a. Obviously too, as this Court held in *Clark*, the treaty provision there involved did not grant nationals of one country any right to acquire property located in the territories of the other, except as donees of the fellow-country-men.

On the other hand, the treaty provision with which we are here concerned, clearly grants to citizens of one country the much broader right to acquire property within the territories of the other, by inheritance or by any other means, without regard to the nationality or the residence of the donor or other transferor. In *Clark* the only question posed (and determined negatively) was whether under the limited treaty provision there in issue, a German national had any right to succeed by inheritance to property in the United States of an American decedent. Here, however, the question is whether the citizens of one country to whom the Convention grants the broad right to acquire property

located in the territories of the other by any means, include such citizens as are not themselves within such territories.

IV

The respondent contends (p. 19) that a State's power to deny rights of inheritance to a foreigner solely because of the existence in his country of foreign exchange controls, even though such controls are maintained consistently with an international agreement to which the United States is a party (p. 10), finds support in holdings of this Court that a State may, without the compulsion of an overriding treaty, voluntarily abrogate, unconditionally or otherwise, the common-law disability of foreigners to inherit. This argument is as far-fetched and untenable as those rejected in the cases that respondent cites.

Rights of inheritance of non-resident aliens are, of course, governed by the public policy of a state, as established by its law, unless its public policy and its law are inconsistent with federal public policy as established by federal action within the constitutional competence of the federal government. *Clark* v. *Allen*, *supra*, 331 U.S. at 517. In the absence of relevant federal public policy so established, a State is free to choose and apply its public policy as it will. Here, however, federal public policy, as established by the adherence of the federal government to the International Monetary Fund Agreement, is that Yugoslavia may maintain exchange controls consistent with the Agreement. In this circumstance, it is clearly inconsistent with federal public policy established by federal action within the constitutional competence of the federal government, for a State to deny a Yugoslav

resident and citizen rights of inheritance that he would otherwise have under its laws, solely because of the existence of such exchange controls in Yugoslavia. *United States* v. *Pink*, 315 U.S. 203 (1942); *Perutz* v. *Bohemian Discount Bank*, 304 N.Y. 533, 110 N.E. 2d 6 (1953).

The emptiness of the respondent's position on this score is evidenced by the fact that the complaint is merely that Yugoslavia has foreign exchange controls, and not that the American distributees of Yugoslav estates are not receiving their distributive shares in dollars in the United States. See, Pet. pp. 9, 10. In this connection, it should be noted that in the International Monetary Fund's *Eleventh Annual Report on Exchange Restrictions* (1960), p. 352, the following is said concerning transfers of capital from Yugoslavia:

> All transfers of a capital nature by residents or nonresidents are subject to individual license. * * * A Decision of the Yugoslav Federal Executive Council of October 14, 1955 *requires* the Yugoslav authorities to continue to permit the remittance of inheritances to citizens of the United States, provided that the remittance is requested within three years from the date of distribution of the estate. [Emphasis supplied.]

It is significant, too, that Article II of the Economic Cooperation Agreement of 1952 between the United States and Yugoslavia, T.I.A.S. 2384,[2] provides that

> 1. In order to achieve the maximum economic strength through the employment of assistance received from the Government of the United States of America, the Government of the Federal

[2] Entered into pursuant to Public Law 472, 80th Cong., as amended, 60 Stat. 137, Tit. 22 U.S.C. Sec. 1501 *et seq.*

> People's Republic of Yugoslavia will use its best endeavors:
>
> * * *
>
> (c) to assure the stability of its currency, the validity of its rate of exchange, and its internal financial stability.

This provision was included in such agreement pursuant to the statutory requirement, Tit. 22 U.S.C. §1513(b)(2), that foreign economic cooperation agreements provide for the taking by the recipient country of

> * * * financial and monetary measures necessary to stabilize its currency, establish or maintain a valid rate of exchange * * * and generally to restore or maintain confidence in its monetary system * * *.

Obviously, such "endeavors" and "measures" must include, when appropriate to the achievement of the required ends, the regulation of foreign exchange transactions, particularly capital transfers.

In the circumstances, it is wholly incongruous that a State be permitted to consider the existence of foreign exchange controls in Yugoslavia as being offensive to *its* public policy, and on that ground to deny to citizens of Yugoslavia rights of inheritance to which they otherwise would be entitled under its laws.

IN CONCLUSION

This controversy involves much more than the inheritances which the Court below has denied the petitioners, and has permitted Oregon to escheat. It involves not only the meaning and effect of a treaty in its internal application—as granting or not granting rights to non-resident aliens—but it is fraught with implication

for American rights abroad. It raises questions, too, of the force and dignity to be accorded the construction given to a treaty by the Executive, communicated to, and accepted by the other party to it, and relied on by the Congress and the Executive as a basis for the protection of American rights abroad. It poses for resolution the question whether a State may deny rights to foreigners by reason of measures taken by their government with the approval and consent of the United States given in the furtherance of its foreign policy. While the outcome is, of course, important to the petitioners, it must be of immeasurably greater importance to the United States. The Court has the benefit of the views of Oregon. It would, we think, be but fitting if the United States were able to express its views, for its interests, no less than the petitioners', are challenged by what Oregon has done.

The petition should be granted.

Respectfully submitted,

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